

REMARKS

This document is filed in reply to the final office action dated April 23, 2007. Claims 1-7, 17-19, and 29 are under examination.

Independent claim 1 covers a method of detecting a target body in a specimen. The method includes acquiring and recording a first image and a second image at a location in a specimen field that has been exposed to a first fluorophore and a second fluorophore. Applicants previously amended claim 1 to specify that the first and second images are acquired and recorded at two different magnifications, i.e., a low magnification and a high magnification, respectively.

Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner again rejected claims 1-7, 17-19, and 29 under 35 U.S.C. § 112, first paragraph as falling to comply with the written description requirement for containing new matter. Specifically, the Examiner argues that the specification does not disclose acquiring images at two different magnifications, low and high, for the first and second fluorophores respectively.

Previously, Applicants pointed out a passage in the specification at page 8, line 27 through page 9, line 7, which supports the amendment. More specifically, this passage teaches a detection method that includes

“scanning [a] specimen field at a low magnification for first sources of photons at [a] first wavelength and for second sources of photons at [a] second wavelength;

registering the location of each first source and each second source within the specimen field;

acquiring and recording a first image of the specimen field at each location, the first image generated via an optical or electronic filter that substantially blocks photons of the second wavelength but is permissive for photons of the first wavelength;

acquiring and recording a second image of the specimen field at each location at a high magnification, the second image generated via an optical or electronic filter that substantially blocks photons of the first wavelength but is permissive for photons of the second wavelength;” (emphases added)

In a prior response, Applicants also submitted that, in view of this teaching, one skilled in the art would recognize that (i) the three steps of “scanning,” “registering the location of each first source and each second source,” and “acquiring and recording a first image” are conducted at the “low magnification,” and (ii) the step of “acquiring and recording a second image” is conducted at the “high magnification.”

Simple logic dictates that when describing a method and a condition is specified that condition is maintained until a different condition is specified. For example, if a method states that sample should be placed in a 37° C water bath and then goes on to state that various things be added to the sample and finally states that the sample should be place on ice, one would naturally conclude that the sample should remain in the 37° C water bath until instructed to place it one ice. One would not imagine that the sample should be moved to the ice bath before being told to do so or that it should be moved from the 37° C water bath to 45° water bath. Similarly, if one is told to carry out a microscopy step and low magnification, carry out an additional microscopy step and then carry out another microscopy step at high magnification, one would assume that the steps are carried out at low magnification until told to carry out a step a high magnification.

Here, in view of the teaching from the specification, a skilled artisan would understand the Applicants to be in possession of the claimed invention, including the step of “acquiring and recording a first image at a low magnification.” Thus, even if the magnification at which this step is conducted is not explicitly described in the specification, adequate description requirement is met. For the above reasons, Applicants submit that the Examiner's position is untenable.

To justify his position, the Examiner also asserted that “for one skilled in the art it would seem counterproductive to acquire images of two fluorophores at different, low and high, modifications.” See the Advisory Action, page 2, lines 6-7.

Applicants disagree. The specification teaches advantages of acquiring images of two fluorophores at different, low and high, modifications. For example, images of a low magnification allow one to scan for a large number of positive events quickly; and images of a high magnification allow one to observer each positive event in detail. See, e.g., page 25, lines 15-18; page 26, lines 20-22; and page 29, lines 12-16 of the

specification. In view of these advantages, Applicants submit that it is not counter-productive to acquire images of two fluorophores at different modifications, low and high. To the contrary, it is desirable.

In view of the above remarks, Applicants submit that claims 1-7, 17-19, and 29 are in condition for allowance, and such action is respectfully requested.

Request for Interview

Applicant's representative requests a telephone with the Examiner and the Examiner's supervisor before receiving an action on the merits.

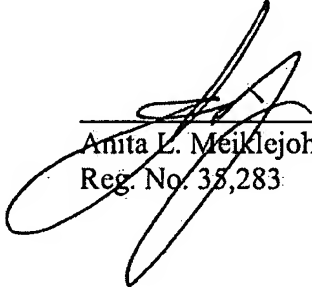
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Page : 12 of 12

Attorney's Docket No.: 00530-097001 / 731.02

Enclosed is a Request for Continued Examination and a Petition for Extension of Time with the required fees. Please apply any other required fees to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,

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